

JACK McCARLEY

IBLA 81-510

Decided October 6, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring mining claim abandoned and void. I MC 43034.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

2. Federal Land Policy and Management Act of 1976: Assessment Work--Mining Claims: Assessment Work

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

APPEARANCES: James R. Thurow, Esq., Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Jack McCarley has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 11, 1981, declaring the Bee Line mining claim, I MC 43034, abandoned and void for failure to file timely evidence of annual assessment work or a notice of intention to hold the claim on or before December 30, 1979, as required by 43 CFR 3833.2. 1/

The record indicates that appellant's mining claim was located prior to October 21, 1976. On October 22, 1979, appellant submitted proofs of labor for the 1977 and 1978 assessment years. The letter accompanying the submission, dated October 19, 1979, stated that the proof of labor for the 1979 assessment year had been recorded with the county recording office on August 20, 1979, but that it had been "mislaidd." The letter also stated that a notice of location was enclosed. There is no evidence that either the notice of location or the proof of labor for the 1979 assessment year has ever been filed. 2/

In his statement of reasons for appeal, appellant contends that BLM did not use "reasonable means" to notify him of the change in its regulations, thereby violating his "constitutional procedural due process rights," and that he filed timely with the county recording office.

[1, 2] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), provides in relevant part that the owner of an unpatented mining claim "located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter" file either an affidavit of assessment work or a notice of intention to hold the mining claim.

Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), provides the penalty for failure to satisfy the filing requirement of section 314(a)

1/ BLM erroneously used the Dec. 30, 1979, date. The filing deadline for evidence of annual assessment work or notice of intention to hold was Oct. 22, 1979, not Dec. 30, 1979. See 43 CFR 3833.2-1(a). This date was "sooner" than Dec. 30, 1980, i.e., "December 30 of [the] calendar year following the calendar year of recording." 43 CFR 3833.2-1(a).

2/ Failure to file timely a notice of location must itself result in a mining claim being declared abandoned and void. See 43 U.S.C. § 1744(b) and (c) (1976); 43 CFR 3833.1-2 and 3833.4(a); e.g., Walter Schivo, 53 IBLA 40 (1981). The deadline for the filing of appellant's notice of location was Oct. 22, 1979. 43 CFR 3833.1-2(a). Even so, the record shows that on Nov. 24, 1980, BLM sent a letter to appellant requesting that he forward a copy of the location notice to BLM "[i]n order to complete your filings * * *."

of FLPMA, supra, that is, "it shall be deemed conclusively to constitute an abandonment of the mining claim." See 43 CFR 3833.4(a).

In our recent decision in Perry L. Johnson, 57 IBLA 20 (1981), we concluded that where a mining claimant filed evidence of annual assessment work for the 1974, 1975, 1976, 1977, and 1978 assessment years on September 27, 1979, but failed to file for the 1979 assessment year, he satisfied the filing requirements of the statute. We stated that: "The statute only requires that a proof of assessment work be filed; it does not speak to which assessment year the proof must be for." Id. at 21 (emphasis in original). However, we also indicated that to the extent the applicable regulation, 43 CFR 3833.2-1(a), "fleshes out this statutory requirement in more specific terms," it must also be complied with. Id. at 21. 43 CFR 3833.2-1(a) provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or notice of intention to hold the mining claim. [Emphasis added.]

Therefore, appellant herein was not in compliance with the regulatory requirement because at the time of his filing, October 22, 1979, the previous assessment year was the 1979 assessment year. While Perry L. Johnson, supra, would support a holding that appellant be allowed an opportunity to file proof of labor for the "preceding" (1979) assessment year prior to a finding of abandonment, further facts in this case require that the claim be declared abandoned and void.

The reason is that there is no evidence that appellant filed either evidence of annual assessment work or a notice of intention to hold the claim on or before December 30, 1980. Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after January 1 and on or before December 30. James V. Joyce (On Reconsideration), 56 IBLA 327 (1981). Failure to do so constitutes an abandonment of the claim and renders the claim void. Lela J. Fillmore, 56 IBLA 385 (1981); James V. Joyce (On Reconsideration), supra.

The responsibility for complying with the recordation requirement rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); A. J. Grady, 48 IBLA 218 (1980); Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge

